

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM T. JOHNSON,	§	
	§	No. 444, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9711014716
Appellee.	§	

Submitted: February 2, 2010

Decided: April 21, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 21st day of April 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm as supplemented, it appears to the Court that:

(1) The appellant, William T. Johnson, filed this appeal from the Superior Court's denial of his motion for correction of sentence and motion for postconviction relief. The State of Delaware has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Johnson's opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Del. Supr. Ct. R. 25(a).

(2) Johnson and a co-defendant were tried in 1998 for having committed three armed robberies. The State sought to prove that Johnson was the driver of the getaway car. The jury convicted Johnson of one count of robbery and related offenses. The Superior Court granted the State's motion to declare Johnson a habitual offender and sentenced him under title 11, section 4214(a) of the Delaware Code. On direct appeal, this Court affirmed Johnson's convictions and sentence.² In 2002, the Court affirmed the denial of Johnson's first motion for postconviction relief.³

(3) In February 2009, Johnson filed a motion for correction of sentence alleging that the State's habitual offender motion was deficient. In April 2009, Johnson filed a motion for postconviction relief alleging that he is entitled to a new trial on the basis of this Court's 2009 opinion in *Allen v. State*.⁴ By order dated July 27, 2009, the Superior Court denied Johnson's motions as without merit.⁵ This appeal followed.

(4) The Court has determined that the denial of Johnson's motions should be affirmed. We agree with the Superior Court that Johnson's "habitual status was sufficiently established and [he] was appropriately sentenced," and that the

² *Johnson v. State*, 1999 WL 1098173 (Del. Supr.).

³ *Johnson v. State*, 2002 WL 1836684 (Del. Supr.).

⁴ See *Allen v. State*, 970 A.2d 203 (Del. 2009) (holding that when a charged offense is divided into degrees, a defendant convicted of the offense on the basis of accomplice liability is entitled to an instruction requiring that the jury make an individualized determination of the degree of the defendant's culpability).

⁵ *State v. Johnson*, 2009 WL 2385153 (Del. Super.).

accomplice liability jury instruction given in Johnson's case "sufficiently complies with *Allen*."⁶ The Court has further determined that both of Johnson's motions were subject to procedural bars without exception.⁷

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm as supplemented is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ The record reflects that the jury was instructed in relevant part:

If you unanimously find beyond a reasonable doubt that there was a principal-accomplice relationship between [Johnson] and one or more other persons with respect to the robbery charges, you must also unanimously decide what degree of robbery is compatible with [Johnson's] responsibility for any aggravating fact or circumstance, in this case the threat of force or display of a deadly weapon, irrespective of the responsibility for that aggravating fact or circumstance of any principal or any other accomplice. In other words, even though you may find that [Johnson] was an accomplice to the liability, you need not find that each participant is guilty of the same degree of robbery. As such, you will be required to determine whether [Johnson's] accountability establishes a violation of robbery in the first degree, robbery in the second degree or theft.

Trial Tr. at 181-82 (Oct. 1, 1998).

⁷ See Del. Super. Ct. Crim. R. 35(a), (b) (barring motion to correct sentence imposed in illegal manner filed more than ninety days after sentencing); Del. Super. Ct. Crim. R. 61(i)(1) (barring motion for postconviction relief filed more than three years after judgment of conviction is final) (amended 2005 to reduce limitations period to one year for conviction final after July 1, 2005)). *Unitrin, Inc. v. American Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (providing that this Court may affirm a trial court judgment on grounds different from those articulated by the trial court).